

### REMARKS

Claims 1-38 were pending in the instant application as of the issuance of the present Office Action. According to the foregoing amendments, claims 1, 2, 4-8, 18-24 and 27 have been cancelled, without prejudice, and claims 3, 9, 10, 25 and 33-38 have been amended. Accordingly, after the amendments presented herein have been entered, claims 3, 9-17, 25, 26 and 28-38 will remain pending in the application.

Claim 35 has been withdrawn from consideration as being directed to non-elected method claims capable of being re-joined in accordance with the provisions of MPEP § 821.04.

Support for the amendments to the claims may be found throughout the specification and in the claims as originally filed. For example, support may be found at page 1 of Table 1. No new matter has been introduced by these amendments.

### RESTRICTION REQUIREMENT

Claims 1-38 are subject to a restriction requirement. The Examiner has required restriction, under 35 U.S.C. § 121, between the following inventions in the above-identified application:

Group I: Claims 1-17, 25-34 and 36-38, drawn to compositions and methods comprising nucleic acids, classifiable in class 435, subclass 69.1;

Group II: Claims 18-24, drawn to polypeptides, classifiable in class 530, subclass 300;

Group III: Claim 35, drawn to a method of diagnosing the presence or activity of *Corynebacterium diphtheriae* in a subject, classified in class 435, subclass 6.

The Examiner has further required, under 35 U.S.C. § 121, that Applicants elect (1) a single nucleotide sequence from Groups I and III or (2) a single polypeptide sequence from Groups II.

Accordingly, Applicants hereby elect, *without traverse*, the invention of Group I (claims 1-17, 25-34 and 36-38, directed to compositions and methods comprising nucleic acids) and the polynucleotide of SEQ ID NO:1 (encoding the polypeptide of SEQ ID NO:2) for continued examination in the present application. Applicants' election of the foregoing subject matter is without prejudice to Applicants' rights to pursue non-elected subject matter in

other applications. Furthermore, Applicants reserve the right to traverse the restriction between the non-elected groups in this or a separate application.

With regard to the remaining withdrawn claim 35, it is Applicants' understanding that once a composition claim is found to be allowable, the pending method claim 35 that depends from or otherwise includes all the limitations of an allowable composition claim will be re-joined in accordance with the provisions of MPEP § 821.04. Accordingly, Applicants respectfully request re-joinder of claim 35 should any of the pending composition claims be found to be allowable.

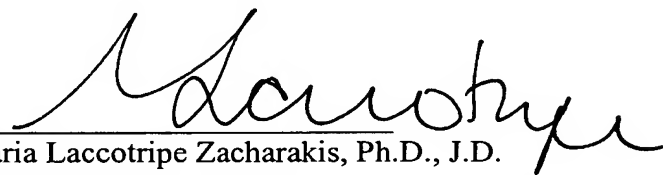
**SUMMARY**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the present filing to Deposit Account No. 12-0080 under Order No. BGI-132CPCN, from which the undersigned is authorized to withdraw.

Applicants respectfully submit that the above-identified application is in condition for allowance. If a telephone conversation with Applicants' attorney would expedite prosecution of the above-identified application, the Examiner is urged to call Applicants' Attorney at (617) 227-7400.

Dated: December 5, 2006

Respectfully submitted,

By 

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